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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/874,853	06/05/2001	Larry James Hughes	8552	5078

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EXAMINER

VAN BRAMER, JOHN W

ART UNIT PAPER NUMBER

3622

DATE MAILED: 08/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/874,853

Applicant(s)

HUGHES ET AL.

Examiner

John Van Bramer

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 and 36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 and 36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amendment filed June 12, 2006, cancelled Claims 35, 37, and 38. No claims were amended and no additional claims were added. Thus the currently pending claims are Claims 1-34, and 36.

Claim Objections

2. The objection to Claim 6 under 37 CFR 1.75(c) detailed in the office action date February 10, 2006, is maintained. While claim 1 does not contain the phrases "direct interfacing with a panelist" or "selective communication with a panelist", these limitations are imposed by claim 1 due to the fact that it recites "receiving panelist input" and "configured to allow dynamic control and manipulation of the virtual purchase". The Applicant has failed to argue how the terms "direct interfacing with a panelist" and "selective communication with a panelist" would provide a further limitation than those imposed by the preceding statements in claim 1.

Claim Rejections - 35 USC § 101

3. The 35 U.S.C. 101 rejection of Claims 1 - 21 in the office action dated February 10, 2006 is maintained. The Applicant's argument that one skilled in the art would recognize the modules as structural components existing as computer hardware is not supported in the Applicants specification. Page 7, lines 30-33 of the Applicants specification state that the purchase environment module, research

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module and panelist interface might likely comprise a set of executable instructions or the like. Therefore, the examiners interpretation of a module, or interface being consistent with computer software is maintained.

Claim Rejections - 35 USC § 112

4. The 35 U.S.C. 112 rejection of Claims 1-6 and 14, 19, and 21 detailed in the office action dated February 10, 2006 is maintained. The Applicant's argument that one skilled in the art would recognize the modules as structural components existing as computer hardware is not supported in the Applicants specification. Page 7, lines 30-33 of the Applicants specification state that the purchase environment module, research module and panelist interface might likely comprise a set of executable instructions or the like. Therefore, the examiners interpretation of a module, or interface being consistent with computer software and thus providing no structure is maintained.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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6. Claims 1 - 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Blinn et al. (U.S. Patent Number: 6,058,373).

Claim 1: Blinn discloses an in-channel marketing and product testing system comprising:

- a. A purchase environment module having instructions for generating a virtual purchase environment comprising a plurality of competitive products. (Col. 12, line 63 through Col. 13, line 34)
- b. A panelist interface module configured to receive panelist input from a panelist interface, said panelist interface module arranged in selective communication with said purchase environment module and configured to receive and display said virtual purchase environment. (Col 13, line 35 through Col 14, line 25)
- c. A research module in communication with said panelist interface, the research module configured to allow dynamic control and manipulation of the virtual purchase environment, and configured to receive panelist input from said panelist interface module. (Col. 15, line 48 through Col 17, line 35)

Claim 2: Blinn discloses the marketing and product testing system of claim 1, wherein said research module further comprises research instruments configured to facilitate analysis of said panelist input. (Col 23, lines 16 – 42)

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Claim 3: Blinn discloses the marketing and product testing system of claim 1, further comprising a fulfillment module having executable instructions configured to receive purchase orders entered by a panelist through said panelist interface. (Col 36, line 65 through Col. 38, line 37)

Claim 4: Blinn discloses the marketing and product testing system of claim 3, further comprising a delivery module having executable instructions to implement the delivery of products according to said purchase orders. (Col 36, line 65 through Col. 38, line 37)

Claim 5: Blinn discloses the marketing and product testing system of claim 3, further comprising a inventory module having executable instructions to track and maintain inventory availability within said system. (Col 36, line 65 through Col. 38, line 37)

Claim 6: Blinn discloses the marketing and product testing system of claim 1, wherein said research module is in selective communication with said panelist interface and configured to provide direct interfacing with a panelist (Col. 15, line 48 through Col 17, line 35)

Claim 7: Blinn discloses the marketing and product testing system of claim 1, wherein said system is configured to allow simultaneous communication between a

plurality of panelist interfaces and said purchase environment module. (Col 8, lines 11- 17)

Claim 8: Blinn discloses the marketing and product testing system of claim 1, wherein said system is configured to provide a predetermined virtual purchase environment. (Col 13, line 59 through Col 14, line 6)

Claim 9: Blinn discloses the marketing and product testing system of claim 8, wherein said predetermined virtual purchase environment simulates an existing shopping facility. (Col 14, lines 7 – 25)

Claim 10: Blinn discloses the marketing and product testing system of claim 1, wherein said system is configured to simultaneously provide a plurality of predetermined virtual purchase environments to a plurality of panelists. (Col 12, line 63 through Col 13, line 8)

Claim 11: Blinn discloses the marketing and product testing system of claim 1, wherein said panelist's input comprises at least one of the following: answers to one or more questions provided by a researcher and panelist interactions within said virtual purchase environment. (Col 13, line 35 through Col 14, line 25)

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Claim 12: Blinn discloses the marketing and product testing system of claim 1, wherein said virtual purchase environment displays at least one of following shopping stimulus: signage, advertisements, demonstration stations and coupon books. (Col 17, lines 22 – 35)

Claim 13: Blinn discloses the marketing and product testing system of claim 1, wherein said system further comprises tools for allowing real-time manipulation of the virtual purchase environment. (Col 7, line 53 through Col 8, line 62)

Claim 14: Blinn discloses an in-channel marketing and product testing system comprising:

- a. A purchase environment module having instructions for generating a virtual purchase environment comprising a plurality of competitive products. (Col. 12, line 63 through Col. 13, line 34)
- b. A panelist interface configured to receive panelist input and configured to receive and display said virtual purchase environment. (Col 13, line 35 through Col 14, line 25)
- c. A fulfillment module configured to receive purchase orders from a panelist. (Col 36, line 65 through Col. 38, line 37)
- d. A research module in communication with said panelist interface, said research module configured to enable selective control and manipulation of the virtual

purchase environment and configured to receive panelist input from said panelist interface to facilitate analysis thereof. (Col. 15, line 48 through Col 17, line 35)

Claim 15: Blinn discloses the marketing and product testing system of claim 14, wherein said system is configured to provide a predetermined virtual purchase environment to a plurality of panelists to accommodate parallel testing of a product. (Col 8, lines 11 – 17)

Claim 16: Blinn discloses the marketing and product testing system of claim 14, wherein said system (is capable of being) configured to facilitate market testing of an identifiable characteristic of a product. (This claim is merely a recitation of the inventions intended use, Blinn contains all the components necessary to be used in market testing of an identifiable characteristic of a product, such as its price or location on the dynamically generated page.) (eg. the effect on the sales of a watch given its placement on the page in relationship to other watches also displayed) (Col 7, line 53 through Col 8, line 62)

Claim 17: Blinn discloses the marketing and product testing system of claim 14, wherein at least one of the following characteristics of said plurality of competitive products generated within said virtual purchase environment is configured to be manipulated including a change in: price, packaging, orientation,

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arrangement, shelf positioning and aisle positioning. (Col 3, line 37 through Col 4, line 14)

Claim 18: Blinn discloses the marketing and product testing system of claim 14, wherein said generation of said virtual purchase environment is based at least in part on panelist input received. (Col 8, lines 11 – 17)

Claim 19: Blinn discloses the marketing and product testing system of claim 14, wherein said research module is configured to provide analysis of a characteristic of an identifiable product displayed among said plurality of products. (Col 15, line 48 through Col 17, line 35)

Claim 20: Blinn discloses the marketing and product testing system of claim 14, wherein said system further comprises tools for allowing real-time manipulation of the virtual purchase environment, said real-time manipulation based at least in part on real-time panelist's input collected from interfacing with a panelist. (Col 7, line 53 through Col 7, line 62)

Claim 21: Blinn discloses the marketing and product testing system of claim 14, further comprising a delivery module having executable instructions to implement the delivery of products according to said purchase orders. (Col 36, line 65 through Col 38, line 37)

Claim 22: Blinn discloses a method of providing an in-channel marketing and product testing system comprising the steps of:

- a. Providing a purchase environment module having instructions for generating a virtual purchase environment comprising a plurality of competitive products. (Col 12, line 63 through Col 13, line 34)
- b. Providing a panelist interface configured to receive panelist input, said panelist interface arranged in selective communication with said purchase environment module to receive and display the virtual purchase environment. (Col 13, line 35 through Col 14, line 25)
- c. Displaying said virtual purchase environment to at least one panelist in communication with said panelist interface. (Col 7, line 53 through Col 8, line 62)
- d. Collecting a panelist's interactions with said virtual purchase environment through panelist's input into said panelist interface. (Col 23, lines 16 – 42)
- e. Providing a fulfillment module configured to receive purchase orders from said panelist interface. (Col 36, line 65 through Col 38, line 37)
- f. Providing a research module in communication with said purchase environment module and said panelist interface to collect said panelist input from said panelist interface (Col 15, line 48 through Col 17, line 35)

Claim 23: Blinn discloses the method of claim 22, further comprising the step of facilitating the analysis of said collected data with respect to a characteristic of an

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identifiable product displayed among said plurality of products. (Col 15, line 48 through Col 17, line 35)

Claim 24: Blinn discloses the method of claim 22, further comprising the step of manipulating at least one of the identifiable characteristics of said products including: price, packaging, orientation, arrangement, shelf positioning and aisle positioning. (Col 3, line 37 through Col 4, line 14)

Claim 25: Blinn discloses the method of claim 22, further comprising the step of generating the display of said virtual purchase environment based at least in part on panelist's input received. (Col 7, line 53 through Col 8, line 62)

Claim 26: Blinn discloses the method of claim 22, further comprising the step of providing a delivery module having executable instructions to implement the delivery of products according to said purchase orders. (Col 36, line 65 through Col. 38, line 37)

Claim 27: Blinn discloses a method of collecting data relating to an identifiable characteristic of a product comprising:

- a. Providing a purchase environment module having instructions for generating a virtual purchase environment. (Col 12, line 63 through Col 13, line 34)

- b. Providing a panelist interface configured to receive panelist input and configured to receive and display the virtual purchase environment. (Col 13, line 35 – Col 14, line 25)
- c. Providing a panelist with at least one question relating to an identifiable characteristic of a product and receiving an answer to at least one of said questions through said panelist interface. (e.g. shopper_size is an identifiable characteristic of a product, since many products are available in various sizes.) (Col 23, lines 16 – 42)
- d. Generating and displaying a virtual purchase environment based at least in part on said answer to said question. (Col 8, lines 11 – 62)
- e. Collecting a panelist's interactions with said virtual purchase environment. (Col 23, lines 16 – 42)
- f. Providing a research module in communication with said panelist interface to receive panelist input relating to said interaction with said system. (Col 15, line 48 through Col 17, line 35)

Claim 28: Blinn discloses the method of collecting data in claim 27, further comprising the step of manipulating at least one of the characteristics of said products including: price, packaging, orientation, arrangement, shelf positioning and aisle positioning. (Col 3, line 37 through Col 4, line 14)

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Claim 29: Blinn discloses the method of claim 27, further comprising the step of providing a fulfillment module having executable instructions configured to receive purchase orders entered by a panelist through said panelist interface. (Col 36, line 65 through Col 38, line 37)

Claim 30: Blinn discloses the method of claim 27, further comprising the step of providing a delivery module having executable instructions to implement the delivery of products according to said purchase orders. (Col 36, line 65 through Col 38, line 37)

Claim 31: Blinn discloses a computer-readable medium containing instructions for controlling a computer system to provide an in-channel marketing and product testing system, by:

- a. Generating a signal for transmitting a virtual purchase environment comprising a plurality of competitive products. (Col 12, line 63 through Col 13, line 34)
- b. Providing the transmission signal to a panelist interface configured to receive panelist input, said panelist interface configured to receive and display said virtual purchase environment. (Col 13, line 35 through Col 14, line 25)
- c. Displaying said virtual purchase environment to at least one panelist in communication with said panelist interface. (Col 13, line 35 through Col 14, line 25)

- d. Collecting a panelist's interactions with said virtual purchase environment through panelist input into said panelist interface. (Col 23, lines 16 – 42)
- e. Providing a fulfillment module configured to receive purchase orders from said panelist interface. (Col 36, line 65 through Col 38, line 37)
- f. Analyzing collected panelist's input in a research module in communication with said purchase environment module and said panelist interface. (Col 15, line 48 through Col 17, line 35)

Claim 32: Blinn discloses the method of claim 31, further comprising the step of manipulating the display of said virtual purchase environment in real-time. (Col 13, line 35 through Col 14, line 63)

Claim 33: Blinn discloses a method in a computer system for providing an in-channel marketing and product testing system, comprising the steps of:

- a. Providing a purchase environment module having instructions for generating a virtual purchase environment comprising a plurality of competitive products. (Col 12, line 63 through Col 13, line 34)
- b. Providing a panelist interface configured to receive panelist input, said panelist interface arranged in selective communication with said purchase environment module to receive and display the virtual purchase environment. (Col 13, line 35 through Col 14, line 25)

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- c. Displaying said virtual purchase environment to at least one panelist in communication with said panelist interface. (Col 7, line 53 through Col 8, line 62)
- d. Collecting a panelist's interactions with said virtual purchase environment through panelist input into said panelist interface. (Col 23, lines 16 – 42)
- e. Providing a fulfillment module configured to receive purchase orders from said panelist interface. (Col 36, line 65 through Col 38, line 37)
- f. Providing a research module in communication with said purchase environment module and said panelist interface, to collect panelist input from said panelist interface to facilitate analysis thereof. (Col 15, line 48 through Col 17, line 35)

Claim 34: Blinn discloses the method of claim 33, further comprising the step of manipulating at least one of the characteristics of said products including: price, packaging, orientation, arrangement, shelf positioning and aisle positioning. (Col 3, line 37 through Col 4, line 14)

Claim 36: Blinn discloses a method of using a panelist interface for accessing an in-channel marketing and product testing system, comprising the steps of:

- a. Providing a panelist an identification record. (Col 23, lines 16-42)
- b. Allowing a panelist in communication with said panelist interface to access said system via panelist input comprising said identification record. (Col 7, line 64 through Col 8, line 62)

- c. Displaying a virtual purchase environment comprising a plurality of competitive products to the panelist in communication with said panelist interface. (Col 12, line 63 through Col 13, line 34)
- d. Collecting a panelist's interactions with said virtual purchase environment through panelist input into said panelist interface in communication with a research module and configured to receive said panelist input to facilitate analysis thereof. (Col 15, line 48 through Col 17, line 35)
- e. Providing a fulfillment module configured to receive purchase orders from said panelist interface. (Col 36, line 65 through Col 38, line 37)

Response to Arguments

- 7. Applicant's arguments filed June 12, 2006 have been fully considered but they are not persuasive.
 - a. The applicant argues that Blinn does not describe a virtual purchase environment. However, as stated in the Office Action dated February 10, 2006, column 12, line 63 through column 13, line 34 describes a shopping session being performed over a computer network. Since the interaction between the seller and the buyer are taking place over a computer system, and not in a brick and mortar retail establishment, they are occurring in a virtual purchase environment.
 - b. The applicant argues that Blinn does not describe a research module in communication with said panelist interface. However, Fig 3. discloses a

database module 132 (research module) interacting with a series of tables in a database. The interaction of the module with the databases provide dynamic control and manipulation of the virtual purchase environment as disclosed in the Office Action dated February 10, 2006. Furthermore, information the panelist inputs into the system is placed into the database via the database module 132. Therefore, the database module is in direct communication with the panelist interface when processing both input and output requests.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

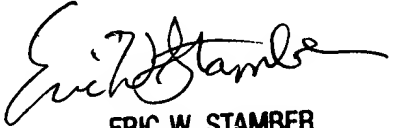
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Van Bramer whose telephone number is (571) 272-8198. The examiner can normally be reached on 7am - 4pm Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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